AARP ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER-SMITH

IN THE MATTER OF THE COMMISSIONS
INVESTIGATION IN RETEAIL COMPETITION
Docket No. E-00000W-13-0135

NOTICE OF FILING ELECTRIC COMPETITION RESPONSIVE COMMENTS OF AARP

Notice is hereby given that AARP has filed its Responsive Comments regarding Staff's May 23, 2013 Notice of Inquiry in this docket.

Respectfully submitted this 16th day of August, 2013.

AARP

By Stephen M. Jennings

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BEFORE THE ARIZONA CORPORATION COMMISSION

Generic Docket No. E-00000W-13-0135, IN THE MATTER OF THE COMMISSION'S INQUIRY INTO RETAIL ELECTRIC COMPETITION

REPLY COMMENTS BY AARP

August 16, 2013

INTRODUCTION

AARP appreciates the opportunity to reply to the Comments filed in this proceeding on July 16, 2013. As with our direct comments, AARP's comments were developed with the assistance of our consultant, Barbara R. Alexander.

The Comments submitted in this proceeding reflect a wide range of interests and recommendations, many of which are in direct conflict, and others of which indicate the complexity and controversial issues and policies that would need to be resolved should Arizona undertake another expensive and lengthy process to implement retail electric competition.

AARP continues to recommend that the Commission close this investigation and firmly reject any proposal to revisit and reinvent the nature of Arizona's regulation of essential electricity service. AARP joins with comments filed by other consumer organizations, commercial customers, and utilities in rejecting this proposal.[1]

AARP's comments will address the statements and recommendations made by the proponents of retail electric competition in detail, but a summary of the conflicting opinions from even those that support initiating this process should give the Commission pause and contribute to our recommendation to drop this proposal.

A review of the comments and recommendations from those that endorse the implementation of retail electric competition indicates:

- The proponents have very different views about the model that Arizona should adopt for retail competition. As a result, there is neither consensus nor factual evidence to support what approach should be implemented in Arizona and any suggestion that restructuring should be pursued in

[1] See, e.g., the Comments filed by Arizona Community Action Agencies, Home Energy Assistance Fund, Arizona Investment Council (AIC), a coalition of electric cooperatives', Tucson Electric, Arizona Public Service Company, Salt River Project, and The Navajo Nation.

Arizona is a recipe for lengthy and disputed arguments that will not contribute to the ongoing need for stability and regulatory certainty in meeting future generation needs for Arizona's customers.

- A key area of conflicting recommendations concerns whether default service should be provided at all (NRG Energy), whether it should be a transition service for only a temporary period (RESA, NEM), or whether it should be provided based on cost of service ratemaking (AEC). Default service is provided by the distribution utilities pursuant to competitively acquired wholesale market contacts in every restructuring state except Texas. AARP opposes recommendations that default service should not be provided at all, should be provided for only a temporary period, or that it should be structured to reflect volatile and short-term wholesale market prices. Our initial comments provided a further discussion of this important issue.
- There are widely divergent opinions on whether an effective or even useful retail market can be created without divestiture or structural separation by the current utilities, a move that raises the legal issues surrounding the *Phelps Dodge* decision and the likelihood of additional and costly legal proceedings.
- None of the comments of the proponents explain or even acknowledge that no state has implemented retail electric competition for residential and small commercial customers on a large scale since the early 2000's. None of the proponents explain why many Western states abandoned or suspended retail competition at the same time that Arizona suspended its implementation efforts.
- Most of the studies that are referenced by the proponents of retail competition that purport to document that customers have benefited in the form of lower electricity prices are either outdated or defective. There is no doubt that prices have declined recently due to the prevalence of lower cost natural gas in the New England and Mid-Atlantic markets and the impact of that lower price compared to many coal and oil-fired generation plants that are relied upon in other jurisdictions. However, none of the proponents point out that the exact reverse occurred in the mid-1990's when natural gas prices increased dramatically and resulted in much higher electricity prices in the wholesale and retail markets compared to coal. Furthermore, any analyses of prices that may exist in the wholesale markets do not reflect the actual prices that customers pay to retail suppliers. As AARP has documented in our Comments, there are uncontested studies of actual bills paid by residential customers in New York, Pennsylvania, and Ontario, Canada that confirm that most residential customers in these studies are paying higher prices to alternative suppliers compared to their local utility's default service that is based on passing through wholesale market prices. The risks that residential customers, particularly vulnerable low income and older consumers, would pay higher prices is real and has not been contested by these proponents.

- There are some factual statements about the number of jurisdictions that many commenters have identified as implementing retail competition for electricity that should be clarified. Several commenters state that 17 states plus the District of Columbia are implementing retail electric competition. However, several of these states have substantially limited this implementation to large commercial and industrial customers or put caps on the level of migration that can occur. These states include California, Oregon, Nevada, Montana, and Michigan. Therefore the only states that are currently implementing retail competition for residential and small commercial customers (so-called "mass market" customers) include the following shorter list:

  Maine
  Massachusetts
  New Hampshire
  Rhode Island
  New York
  Connecticut
  New Jersey
  Pennsylvania
  Delaware
  Maryland
  District of Columbia
  Ohio
  Illinois
  Texas

It is useful to note that all of these states, with the exception of Texas, are part of an integrated transmission and control system regulated by FERC. The Texas market is unique in that it is under the control of ERCOT, a state regulated wholesale market entity. The lack of any residential retail competition experience or results in the Western state markets is a significant defect in the proponent's recitation of results from these jurisdictions.

- The rate of residential customer migration varies widely among these states and is primarily a reflection of whether the state has authorized municipalities and other regional governmental bodies to implement aggregation programs, whether opt-in or opt-out, by local ordinance. The states that have adopted these aggregation programs—Illinois, Ohio, and Massachusetts--show the highest level of customer migration because those aggregation populations are included in the statistics. In states without such programs, the rate of residential customer migration lags significantly behind these inflated statistics and reflects a shopping rate of 20%-30%.
- AARP's concerns about restructuring and the operations of the wholesale market were confirmed with recent announcements of enforcement

actions by FERC against large scale market manipulations by energy traders. On July 16, 2013, FERC ordered $453 million in penalties from Barclays Bank PLC and four its traders due to their manipulation of electricity prices in California and other western markets between November 2006 and December 2008. FERC also ordered these entities to disgorge $34.9 million in unjust profits to the low income programs in four states, including Arizona. On July 30, 2013 FERC accused JPMorgan Chase & Co. of running eight different manipulative bidding strategies to boost its electricity profits in California and the MidWest. This announcement alleged improper trades in 2010 and 2011. According to press reports, the energy trader is negotiating a settlement of around $500 million. Both of these high profile market manipulation proceedings reflect the length of time to actually document and settle or enforce FERC's regulations and make plain that retail customers suffer higher electricity bills while some marketers and traders pocket huge profits.

COMMENTS OF THE GOLDWATER INSTITUTE

The Comments by the Goldwater Institute suggest that the Commission rely on the retail competition experiences and models adopted in Texas and Pennsylvania. The Institute proposes a transition that would require three phases and nine separate steps and concludes that the Institute is "...reasonably certain that retail electric competition will result in reduced rates." [At 5] The Institute also claims that retail competition will result in "...an abundance of relatively cheap energy that will benefit all customer classes equally and equitably." [At 6] At no point in these comments does the Institute provide any factual evidence that would allow any reasonable person to conclude that these results will occur in Arizona. The Institute does not provide any analysis of the generation mix that serves Arizona customers and how moving to competition will result in "cheap energy." The Commission should reject such allegations as unproven.

While these comments describe and rely on the Texas and Pennsylvania experiences, the Institute does not identify that there are major differences between these two state restructuring models. Nor do the comments look beyond these states to the other states that originally adopted this structure and then abandoned it altogether or prohibit it for residential and small commercial customers, such as Montana, New Mexico, Nevada, Oregon, and California.

Conspicuous in the Institute's comments are references to the prices available in the Texas market. The Comments point to the availability of some offers at 7 cents per kWh in some markets and state that there have not been any problems with sufficient capacity in that market. [At 3] However, the facts are the 7 cents per kwh is an anecdotal price that might be available to some customers in the Texas residential market and the Texas market is currently dealing with serious capacity issues.

First, attached to these comments is a spreadsheet that summarizes all the 233 offers available to residential customers in Zipcode 77060 in Houston, Texas as of August 9, 2013. The offers are listed in order of lowest initial price to highest. Even a casual review of this chart indicates that many of these offers for what appears to be lower prices carry fees and charges that are not included in the cents per kWh rate, such as higher charges for using less energy than the supplier assumes with the plan offer, additional fees and charges for contacting the customer service center, and several of the offers that appear to be lower in price require the customer to accept prepaid service. Customers must choose between fixed rates, variable rates, various contract lengths of service, various degrees of renewable energy, and calculate the impact of various fees and charges by accessing and reading the terms of service on the supplier's website. Whether these choices will result in lower prices is a very complicated decision that is made even more complicated and difficult by the lack of any "price to compare" or default service in the Texas market model.

Any conclusion about the actual results in Texas should not be based on a snapshot of what someone might find as one low price on a particular offer at a particular point in time, but rather a reflection of what customers actually pay for electric service. Those results reflect that Texas consumers pay higher prices than the prices paid by consumers served by other Texas municipal utilities and regional cooperatives that have not chosen to implement retail competition.[2]

Second, the statements in these comments that the Texas market has not experienced reliability problems is a grievous error that fails to take into account recent pronouncements by ERCOT, the Texas Public Utility Commission, and numerous Texas Legislators. There is an ongoing crisis in Texas because there is a lack of sufficient generation available to meet the power needs under certain system conditions and growing consumption. According to a June 2012 report commissioned by the Texas PUC by The Brattle Group, a nationally known consultant on energy related issues:

> The Electric Reliability Council of Texas's (ERCOT's) energy-only market has worked well for many years to support efficient operations and to attract sufficient generation investment to maintain resource adequacy. Now, despite reserve margins declining with load growth and retirements, investment appears to have stalled. Many projects have been postponed or cancelled and no major new generation projects are starting construction. As a result, ERCOT projects that reserve margins will fall to 9.8% by 2014, substantially below its current reliability target of 13.75%. Reserve margins will decline even further thereafter unless new resources are added.
>
> Generation investors state that a lack of long-term contracting with buyers, low

[2] This analysis by the Texas Coalition for Affordable Power was published in December 2012 and cited and quoted in AARP's comments.

> market heat rates, and low gas prices in ERCOT's energy-only market make for a uniquely challenging investment environment. In response to these concerns, the Public Utility Commission of Texas (PUCT) has implemented a number of actions to ensure stronger price signals to add generation when market conditions become tight. The PUCT has enabled prices to reach the current $3,000/MWh offer cap under a broader set of scarcity conditions and is considering raising offer caps to as high as $9,000/MWh, among other measures. Following the PUCT's initiatives, forward prices have increased and more than 2,000 MW of relatively low-cost capacity additions have been announced, including uprates and reactivations of mothballed units. The critical question remains whether the recent and proposed reforms will be adequate and what other measures might be necessary to attract sufficient investment.[3]

Two years later, the discussion continues, with no answer. The Chair of the Texas Public Utility Commission Donna Nelson recently stated:

> "Two years ago, we started this discussion because investment in generation was not keeping pace with increasing demand. If the wholesale electric market within ERCOT [Electric Reliability Commission of Texas] fails to attract sufficient investment, the electric reliability of Texans is threatened," Nelson said.[4]

Finally, the Institute's comments concerning Pennsylvania have no relevance to the prices that may be expected to occur in Arizona, a totally different market with different generation supply resources. Nor do the Institute's comments include an actual study of what residential and low income customers pay to alternative suppliers, as was included in AARP's initial comments (documenting that residential and low income customers generally paid more than default service when they signed up with retail suppliers). While retail competition has been in effect in Pennsylvania for over a decade, the majority of residential customers have chosen with remain with the default service provided by the local utility, a service that is competitively acquired in the wholesale market and passed through to customers not served by a supplier. As a result, whatever benefits have resulted from restructuring is passed through to retail customers by the utility.

COMMENTS OF RETAIL COMPETITION ADVOCATES AND RETAIL ENERGY SUPPLY ASSOCIATION (RESA)

These Comments were filed by a large group of marketers that seek to enter the retail market in Arizona. These advocates at least admit that the issue at hand is "beyond price" and that the promised benefits of retail competition will reflect a customer's "desired savings and service innovation." [At 4]

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[3] The Brattle Group, ERCOT Investment Incentives and Resource Adequacy (June 1, 2012), Executive Summary.

[4] http://www.power-eng.com/articles/2013/08/texas-puc-chair-nelson-weighs-capacity-reserve-market-issues.html

Again, these proponents include a chart at p. 8 that provides an example of the highest and lowest prices offered by suppliers in most restructuring states. It is not clear what these proponents are suggesting with respect to what may occur in Arizona since there is no structured wholesale market yet organized, there is no resolution of what role the utility will play with regard to serving customers who choose not to choose (default service), or how the costs to implement restructuring would be allocated to current customers. More importantly, this chart does not tell the Commission that most supplier offers are typically higher than the default service price charged by the utility in several of these states and several of the offers that are lower are in the form of "teaser" rates that are in effect for a short time and not guaranteed after that short period. While some suppliers may offer a lower teaser or initial rate compared to default service, most of those contract terms shift to a variable rate contract that changes every month after a certain period and unless the customer affirmatively leaves the supplier, more volatile and higher prices typically result. Long term fixed price contracts can come with hefty early termination fees. Or, the proposed prices are higher than default service from the start. What customers actually choose and what they know when they choose is more important to consider than what some publicized lowest offer by a supplier may propose.

Attached to these comments is a print out of the 65 different supplier offers to Connecticut Light and Power residential customers on August 9, 2013, taken from the official Commission sponsored website to compare supplier offers.[5] The default service price of 7.573 cents per KWh for generation supply charged by Connecticut Light and Power is fixed until December 31, 2013. The vast majority of offers charge a higher price and would result in higher bills. To the extent that savings would occur during 2-3 month fixed price period, this would obviously provide a benefit to the customers that select that offer. However, of those that would provide a monthly savings, most reflect a short-term fixed price and then a pricing plan and rate (usually a monthly variable rate) that is not disclosed and the customer is automatically enrolled in that new plan unless the customer affirmatively enrolls back with the utility or with another supplier.[6]

The marketers also promote the potential for innovative products and services, but all of these products and services either are being offered or could be offered to Arizona customers by their local utility or by third parties completely unregulated as a public utility. For example, Arizona customers can choose

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[5] www.energizect.com

[6] For example, the Dominion Energy Solutions (http://levcoenergy.com/?page_id=3087) offers that would charge a lower price than CL&P for a few months states as follows:

Term: Service will begin on your next meter read date after CL&P processes your enrollment and will continue through October 31, 2013 ("Initial Term"). Prior to the end of the Initial Term or any Renewal Term, Dominion will provide you written notice of renewal, including the term of such renewal ("Renewal Term") and the pricing plan that will apply during the Renewal Term ("Renewal Notice"). This agreement will automatically renew at the pricing plan and for the Renewal Term set forth in the Renewal Notice unless you request we cancel your service.

among a variety of rate plans, including time-of-use rates as an option for all customers. Arizona customers have access to a full suite of energy efficiency programs that are built into rates paid by all customers. Arizona customers can purchase efficiency services outside the utility offerings. Furthermore, Arizona has a robust renewable energy program that is paid for by rates paid by all customers. Any move to restructuring is likely to adversely impact the ability of utilities to offer these programs and would certainly lose the economies of scale associated with utility wide funding for such initiatives.

The "risks" identified by the marketers in their comments [At 18] that would occur without implementation of retail competition do not acknowledge the risks that would be transferred to consumers if restructuring was implemented. While the marketers allege that prices in the current regulatory structure are "distorted," they offer no evidence to support this allegation. While marketers state that there is a risk of "lack of customization," this is a risk that most consumers would find little value in paying for if it meant having to wade through over 100-200 offers to determine if they might save a small amount for a relatively small period of time on their electric bill. Marketers also correctly point out that there are risks associated with ratepayer funded generation investments, but fail to point out that the risks currently evident in the Texas market concerning the lack of sufficient capacity and new generation to meet growing electricity demand. The marketers, similar to the Goldwater Institute, fail to mention the controversy currently underway in Texas concerning the need for new capacity in their restructured energy market.

These comments include a voluminous compendium of 39 attachments. However, most of these materials are not relevant to any question that must be answered prior to undertaking restructuring in Arizona. Many of the attachments reflect older studies about the impacts of restructuring that have been widely criticized as defective (see, .e.g, A33 and A 34) because they included mandated rate freezes and rate reductions negotiated as part of a restructuring settlement in several key states. Furthermore, most of these articles that claim restructuring benefits were created by proponents of restructuring and carry at least a concern about the validity of the study that calls for additional investigation and evaluation. Among these materials is the study promoted by the COMPETE Coalition (A2) that AARP discusses in more detail in our response to the COMPETE Coalition's comments below.

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION (NEM)

NEM is another coalition of marketers and wholesale market traders that seek to enter the Arizona market. NEM states that restructuring "...will result in lower rates." [At 2] However, the evidence for this "promise" is based on several anecdotal references to prices in several jurisdictions, including Texas that should not be relied upon to predict results in Arizona. First, the prices mentioned are anecdotal and reflect a particular supplier's offering at a particular point in time. Suppliers change their offers frequently. Second, the kWh price is only the tip of the iceberg that the customer must evaluate when deciding if they will save on their electric bill compared to their current supplier because some prices are fixed, others are variable, some come with a myriad of fees and charges that are currently included in standard utility service, and others come with teaser rates that can morph into a more expensive contract after the introductory period. Finally, suppliers are not obligated to serve and can exit the market when profits are not as expected or when market conditions result in losses.

Of particular concern is NEM's statement that marketing abuse and supervision of the retail supplier conduct and contract terms can be handled by means of a Code of Conduct. NEM's comments fail to point out that the states with the most active supplier marketing are also the states with frequent investigations and rule revisions to respond to marketing conduct that takes advantage of low income, elderly, non-English speaking, and other disadvantaged consumers.

For example, the District of Columbia Public Service Commission recently held a public hearing in response to numerous complaints about door-to-door and telemarketing sales activities by alternative suppliers. The transcript from this public hearing reveals the outrageous marketing conduct and the harmful impacts on customers who agree to a contract when the sales agent promises savings but that actually results in rates that are double the default service price.[7] In addition, there is a proceeding underway in Connecticut to respond to the numerous customer complaints about marketer sales conduct.[8] The Ohio

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[7] For example, the testimony of Apolonia Lopez in which she stated that the supplier told her that her grandmother's service was switched after a phone call; the bill was double what it was before the switch, and the utility rate discount program she was on was discontinued. Transcript at 58-60. See also the testimony of Joshlyn Ford who stated that their electric bill jumped from $70 to $178 due to the variable price charged at the end of the six-month fixed rate period in their contract, representing a generation supply price change from 8 cents to over 18 cents per kWh. Transcript at 86. http://www.dcpsc.org/edocket/docketsheets_pdf_FS.asp?caseno=GD117&docketno=17&flag=D&show_result=Y

[8] The Connecticut Department of Public Utilities Regulatory Authority opened Docket 13-07-18 in July 2013, stating:
Due to recent legislative changes and due to the spike in customer complaints against various electric suppliers in recent months, a proceeding is necessary for PURA to review the current operations and marketing rules governing participants in the Connecticut electric retail market. In this proceeding PURA will clarify the new legislative requirements and establish rules and guidelines for electric suppliers and electric distribution companies concerning, but not limited to: customer switching practices, types of generation services or products allowed (fixed, variable rates, etc.), PURA filing requirements, the Rate Board, supplier marketing conduct, customer notices, and disclosure requirements.

At the same time, the Department opened separate investigations of three suppliers, including Direct Energy's, Starion Energy's, and Connecticut Gas & Electric, Inc.'s trade practices in Dockets 13-07-15, Commission has initiated a rulemaking to consider reforms to its current supplier consumer protection rules.[9]

The Maryland Commission has issued a number of cease and desist orders and commenced enforcement against certain marketers. In 2007 the Commission suspended the license of Ohms Energy Co. because of its failure to meet the operational and financial viability requirements in its license.[10] In 2011 the Commission ordered North American Power and Gas LLC to pay a civil penalty of $100,000 and undertake certain remedial measures to retain its license. In its Order the Commission found that the supplier implemented a multi-layer marketing system to solicit electric service customers (independent sales agents paid a commission based on their sales activities) and engaged in deceptive marketing advertisements relating to the role of the utility in selecting a supplier and the potential savings customers would receive if they changed to this supplier.[11] In 2012 the Commission ordered a $60,000 penalty against Viridian Energy Co., finding that it had engaged in false and misleading marketing practices.[12]

AARP strongly opposes any reliance on a voluntary code to regulate marketer conduct. We presume that the Arizona Commission would undertake new and potentially costly enforcement and rulemaking proceedings, acquire qualified staff and consultants to assist in the regulation of competitive markets, and be prepared to monitor markets and market conduct in a manner that differs substantively from current regulatory duties and priorities. These costs and commitments should be considered when calculating the costs and benefits of changing the current regulatory structure, a point that marketers fail to point out in their comments.

NRG ENERGY, INC.

NRG Energy is an owner of generating facilities and several retail marketing affiliates, headquartered in Texas. Unlike comments of some proponents, NRG Energy does not promise that restructuring in Arizona would result in lower prices, but rely on the benefits of "service and values" to promote competition in the retail electric market. [At 3]

Among the examples included in these Comments is that customers can choose the level of service they prefer and, for example, choose between paying

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16, and 17.

[9] Ohio Public Utilities Commission, Docket No. 12-1924-EL-ORD.

[10] Maryland PSC, In the Matter of the Commission's Investigation into Ohms Energy Co., LLC's License to Supply Electricity or Electric Generation Service in Maryland, Case No. 9118, Order Suspending License of Ohms Energy Co. (August 24, 2007).

[11] Maryland PSC, In The Matter Of The Complaint Of The Staff Of The Public Service Commission Against North American Power And Gas, LLC, Case No. 9252, Order No. 84096 (June 9, 2011).

[12] Maryland PSC, Press Release, June 7, 2012, available at

a higher price that includes access to the supplier's call center and a lower price that would impose a separate fee every time a customer calls the supplier's call center. [At 3] A closer look at the examples of "service and values" identified in these Comments should give this Commission serious pause about creating a market in which residential customers would be forced to pay extra for a call to a customer service center to discuss a billing error or resolve a payment plan, or if customers would find value in obtaining airline miles in return for accepting a contract that may result in higher bills and prices, leading to payment difficulties and disconnection of service.

In fact, the Texas market promoted by NRG Energy in its Comments is replete with suppliers that add fees and charges to a customer's contract terms in the fine print, thus requiring customers who need special attention or needs to pay extra for service that are now required to be provided by Arizona's utilities to any and all customers through rates that reflect these costs. It is disingenuous to suggest that customers "get what they want" when the result is a degradation of essential electric service to the point that vulnerable and lower income customers end up paying more for electricity rather than less.

A recent investigation by a consumer watchdog report by the Dallas Morning News found that customers were being charged high fees that were reflected in the fine print of their electric supplier contracts that operate as profit centers and do not reflect any actual incremental costs incurred by the supplier.[13] According to the analysis as reported in the Dallas Morning News,

> Most Texas electricity companies charge extra fees on customer bills that have little to do with electricity. These companies slide through giant loopholes in state law that often shock customers when a monthly bill arrives.
>
> For instance, an electric company serving North Texas customers pays Oncor Electric Delivery only $2.30 to disconnect a household from service and $2.70 to reconnect.
>
> Yet Ambit Energy charges $15 to disconnect and $50 to reconnect — or $100 if a customer wants an immediate reconnection called "expedited." Green Mountain Energy charges $45 to disconnect and $15 to reconnect. Texas Power charges $5 when it sends out a disconnection notice and $65 to reconnect.
>
> Those are hefty profits for what essentially, in the age of smart meters, amounts to pushing a few buttons by Oncor. No longer must a service tech travel to a residence to turn electricity service on or off.
>
> Here's another: The Watchdog constantly receives complaints from Texans who can't understand why they are urged to conserve electricity, yet when they do, they get penalized.

[13] This story was published in the Dallas News on August 10, 2013, http://www.dallasnews.com/investigations/watchdog/20130810-the-watchdog-texas-electricity-companies-profit-from-fees-that-some-call-money-for-nothing.ece

> According to a new survey by Texas ROSE shared with The Watchdog, 29 of 44 retailers charge $7 to $20 a month in penalties — called "minimum usage fees" — if a customer uses less than 1,000 (or in some cases 800) kilowatt-hours per month.

The full report can be found at the website in the footnote below.[14]

The market model promoted by NRG Energy differs significantly from market models proposed by other commenters. NRG promotes the creation of a single distribution utility tariff that would be available to suppliers throughout the State and the elimination of default service. Such a market model would require dramatic changes in current utility rate structures and corporate activities and would no doubt require substantial litigation and costs.

AARP strongly opposes the Texas market model and the vision of customer choice that is reflected in NRG Energy's Comments.

COMMENTS OF ARIZONANS FOR ELECTRIC CHOICE (AEC)

This organization is composed primarily of marketers who seek to enter the Arizona market, as well as large commercial and industrial customers who seek to negotiate favorable deals. There is some overlap between the membership of this group and other commenters.

AEC's Comments, unlike those of RESA. NRG Energy, and other proponents, do not reject the utility's continued role in providing electricity to retail customers under cost of service ratemaking principles. [At 6] Rather, their primary focus appears to be to allow a pool of commercial and industrial customers to select an alternative provider. This model raises the classic "cherry picking" approach that has the potential of causing the fixed costs incurred by utilities to serve remaining customers to be spread over a smaller customer base, thus resulting in either significant stranded costs or higher rates for the remaining customers. The only State that has adopted this approach (Michigan) has created a cap on customer migration to avoid this very adverse result.

The AEC recitation that restructuring resulted in rate decreases at the time of the original adoption of the competition regulations in Arizona does not mention that the price decrease was not due to market forces. Most states implemented a negotiated rate decrease at the onset of restructuring and included stranded costs in rates over an extended period of time on the theory that the forthcoming lower prices in the wholesale market would flow through to customers in the form of retail supply contract offers. However, at the end of the rate caps or rate freezes, wholesale market prices increased dramatically. The story about what happened after the end of the rate caps and negotiated rate

[14] http://texasrose.org/wp-content/uploads/2013/08/Fees-Summary-2013-Report-by-Texas-ROSE.pdf

decreases is conveniently ignored in comments by any of the proponents of restructuring.

After the end of the rate cap or rate freeze, distribution utilities that were obligated to provide default service had to purchase the electricity or natural gas in the wholesale markets since they no longer owned generation supply. In some cases, the utility had to purchase 100% of their default service obligation at a single point in time so that utilities that purchased during a period of high wholesale market prices had to pass through dramatic increases for this service and the impact on the overall electricity bill was widely viewed as unacceptable.

- In Maryland, when Baltimore Gas & Electric purchased default service in the wholesale market for 100% of its default service customers at the end of the rate cap period (those not served by an alternative supplier, which at that time was in excess of 95% of the residential customers), the result was an average total bill increase of 72% for Baltimore Gas & Electric's residential electric customers.

- A small electric utility in Pennsylvania (Pike County Electric) obtained 100% of its default service obligation in the wholesale market in late 2006 after the expiration of its rate cap. The resulting price for default service (generation supply service) was a 129% increase compared to the pre-restructuring rate and the resulting prices caused a 75% increase in the average residential customer total bill.

- Delmarva Power, the largest electric utility in Delaware, also purchased 100% of its default service obligation in 2006 and the resulting 56% average residential bill increase sparked widespread anger and frustration which led to the adoption of statutory reforms about the purchase of default service to prevent short-term price volatility.

As a result, a number of state specific statutory reforms were adopted to more fully supervise the procurement policies associated with Default Service. In general, these statutory amendments were designed to make default service more stable and a reflection of a mix of wholesale market contracts that were "laddered" or purchased over a period of time to avoid volatile price changes and unusual or dramatic changes in prices over time. As a result, in every restructuring state other than Texas the local electric utility purchases default service in the wholesale market and passes those costs on to customers who choose not to choose or who return to default service when a marketer suddenly exits the market or the customer determines that the supplier's contract terms are not acceptable.

This is an organization based in Washington, D.C. whose members are primarily large commercial and industrial customers and marketers that serve them. The COMPETE Coalition claims that residential customers have seen increased value from retail competition. However, it is not clear whether the prices and analysis included in their conclusions are a reflection of the prices that suppliers actually bill to customers or whether those price changes reflect default service prices that are a pass through of wholesale market contracts purchased by utilities on behalf of their customers.

For example, the COMPETE Coalition and other comments submitted by proponents of restructuring point to their analysis of prices in retail competition states compared to fully regulated states that relies on data from the U.S. Energy Information Administration and the Bureau of Labor Statistics between 1997 and 2012. [See, Attachment 2 to Compete Coalition Comments] It is not clear how COMPETE made use of the data from these two sources and it is important to note that the chart itself was not compiled by or approved by either the U.S. Energy Information Administration or the Bureau of Labor Statistics.

AARP calls into question the value of this chart for the following reasons:

1. To what extent are the total rate changes presented in this chart a reflection of the rate caps and rate decreases mandated and agreed to as a condition for the early years of restructuring? Any meaningful chart should reflect the post-rate cap period only.

2. Do the price changes reflected in this chart reflect default service prices charged by the utility based on a pass through of wholesale market contracts or supplier prices? It is highly unlikely that the chart reflect actual supplier prices since there is little public information about how many customers are charged what amount by each supplier in restructuring states. Therefore, to the extent that this chart reflects default service prices, the beneficial impact of restructuring has occurred in the wholesale markets and not due to retail supplier price offerings.

3. Even assuming this chart is a factual presentation of data that can be evaluated, the fact that the commercial sectors have seen the most dramatic price reductions in restructuring states is a fair indication of the "winners" and "losers" as a result of restructuring.

4. This chart compiles data from many restructuring states, some of which have not implemented a retail market for residential customers for many years. The average results of 17 states is likely to be dramatically different than the results that focus on the 14 states that have actually implemented a retail market for residential customers. Among the states included in this chart and which may have biased the results are California, Michigan, and Montana which

do not have retail restructuring for residential customers.

5. Finally if this chart reflects statewide data, it includes prices and rates charged by municipal and other publicly owned utilities, almost none of which have adopted retail competition.

It is possible that this chart shows that the basic source of price reductions in the states that have adopted retail competition is not due to retail competition per se, but rather a reflection of the growing reliance on cheaper natural gas for generation supply for electricity in the wholesale markets, and the decreasing demand that resulted from the economic recession that commenced in 2008. Both of these events resulted in price decreases for default service customers in the Northeast and Mid-Atlantic states.

COMMENTS OF THE STAFF OF THE FEDERAL TRADE COMMISSION (FTC)

The Comments of the Staff of the FTC appear to be primarily oriented to urging the transformation of rates from fixed to time-based rates and to use programs associated with advanced or smart meters. Those issues are not relevant to this investigation. Furthermore, their apparent preference for dynamic pricing and demand response programs rely on examples from Arizona, Florida, and Oklahoma, but none of these states have adopted restructuring and the programs mentioned are implemented by fully integrated electric utilities.

With regard to their support for implementation of retail competition, the FTC Staff predicts that "...average costs will fall," but the FTC Comments then acknowledge that prices actually paid by consumers may not. [See pp. 10-11] As a result, there does not appear to be any basis for assuming that Arizona consumers will benefit equally or equitably if restructuring is implemented.

CONCLUSION

AARP appreciates the Commission's thoughtful consideration of this very radical change in the state's retail electricity market. While other states have moved in to restructure their retail electricity markets, it has not been without risk to residential consumers. Even some proponents of restructuring do not promise price savings, but rather "innovation" and "choice". The ability to shop should not be a goal. The preponderance of comments describe the complexity and cost that would be involved in implementing restructuring. Key questions about the wholesale market remain unresolved. The risk to consumers is too great. AARP continues to recommend that the Commission close this investigation and firmly reject any proposal to revisit and reinvent the nature of Arizona's regulation of essential electricity service.